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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BALMORE ALEXANDER VILLATORO,)	3:16-cv-00531-MMD-WGC
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
PRESTON, <i>et al.</i> ,)	
)	
Defendants.)	
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Before the court is the Defendants’ under seal submission of what appears to be a more current last known address of former Nevada Department of Corrections employee Katherine Hegge (ECF No. 38). This address differs from the one initially provided by Defendants. (ECF Nos. 20, 21) at which the U.S. Marshal was unable to effect service because Ms. Hegge no longer lived at the address provided. (ECF No. 25.)

After the court’s Rule 4(m) Notice of Intent to Dismiss Defendant Hegge for Failing to Effect Service was entered (ECF No. 23), Plaintiff made a motion to be “relieved” of the consequences of Rule 4(m). Plaintiff analogized his motion to a request for Defendant Hegge to execute a Rule 4(d) waiver of service. (ECF No. 34.) Defendants opposed, stating “personal service or another legally-provided substitute is required to exercise jurisdiction over a party.” Defendants, however, did not oppose an extension of time to effect service. (ECF No. 35.) While the court did not grant Plaintiff’s motion, the court extended the 4(m) deadline to August 30, 2019. As pertinent to this order, Defendants’ counsel was directed to attempt to secure a more recent address for Ms. Hegge, and if one was obtained, to file such address under seal. (ECF No. 36.) On July 29, 2019, Defendants’ counsel filed what appears to be Ms. Hegge’s current (and out of state) address. (ECF Nos. 38, 39.)

1 In another inmate civil rights lawsuit involving Ms. Hegge, *Ruiz v. Aranas*, 3:17-cv-00643-RCJ-
2 WGC, the Office of the Attorney General accepted service for Ms. Hegge and is proceeding with her
3 representation in that matter. That acceptance of service (in *Ruiz*) prompted the court to inquire whether
4 the Attorney General could accept service for Ms. Hegge in yet another civil rights case in which
5 Ms. Hegge is a Defendant, *Branigan v. Aranas*, 3:18-cv-00024-MMD-WGC. The Office of the
6 Attorney General responded as follows in the *Branigan* matter:

7 In this Matter [*Branigan*], the Office of the Attorney General filed a
8 notice that they would be unable to accept service for Ms. Hegge. (ECF
9 No. 18). This is in line with the policy of the Office of the Attorney
10 General and the Statutes of the State of Nevada. See NRS 41.0339. Even
11 though this Office represents Ms. Hegge on another matter, we are not
12 entitled to presume that we have blanket authority to represent her in all
13 potential matters.

14 However, in investigating this matter, Counsel for the Defendants
15 received an unsolicited telephone call from Ms. Hegge. She indicated her
16 desire that this Office represent her interests in this matter, and requested
17 that we accept service, on her behalf, for this matter, only. She indicated
18 she would provide a written request for representation, in accordance
19 with the Statutes. Therefore, service of process is accepted for Ms. Hegge
20 in this matter. This acceptance does not represent a change of policy on
21 future matters.

22 *Branigan, supra*, ECF No. 36 at 1-2.

23 Although the court is aware of the Attorney General's policy regarding representation of former
24 NDOC employees only upon request of the employee, in the present matter (*Villatoro*), and in
25 accordance with the waiver of service provisions of Fed. R. Civ. P. 4(d), the court requests the Office
26 of the Attorney General to attempt to make contact with Ms. Hegge to ascertain whether she would
27 authorize similar representation of her interests in this matter as well. Her consent in that respect would
28 avoid the U.S. Marshal from having to undertake a second attempt at serving Ms. Hegge at the latest
address Defendants have provided.

The parties should be aware that under Fed. R. Civ. P. 4(d)(1), a party has a duty to avoid
unnecessary expenses of serving the summons. Although this order is not necessarily the equivalent of
a situation where a Plaintiff has requested a defendant to waive service under Rule 4(d), where a Plaintiff
does so and if a defendant who is located within the United States fails, without good cause, to
sign and return a waiver, "the court *must* impose on the defendant (a) the expense incurred in making

1 service” Rule 4(d)(2)(A); emphasis added.¹ The court notes that Plaintiff’s earlier motion to be
2 relieved from service requirements could be interpreted as an informal request to Defendant under
3 Rule 4(d) to waive service. Because Plaintiff does not have the ability to mail a 4(d) request to
4 Defendant Hegge, his motion (ECF No. 34) could be interpreted as its functional equivalent.

5 Counsel shall advise the court within **ten (10) days** of the date of this order whether the Office
6 of the Attorney General may accept service for Ms. Hegge. If not, then the court will proceed to direct
7 the U.S. Marshal to serve the Defendant.

8 **IT IS SO ORDERED.**

9 DATED: July 30, 2019.

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13 WILLIAM G. COBB
14 UNITED STATES MAGISTRATE JUDGE
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28 ¹ The U.S. Marshal’s fees associated with the Marshal’s initial attempts at service resulted in fees to the government in the amount of \$260.00. (ECF No. 25 at 2.)